



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 110

[Docket Number USCG-2020-0216]

RIN 1625-AA01

### Anchorage Grounds; Cape Fear River Approach, North Carolina

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to amend the anchorage regulations for Lockwoods Folly Inlet, NC, and adjacent waters, by establishing a new offshore anchorage and relocating and amending the existing explosives anchorage. The purpose of this proposed rule is to improve navigation and public safety by accommodating recent and anticipated future growth in cargo vessel traffic and vessel size that call on Military Ocean Terminal Sunny Point and the Port of Wilmington, NC. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0216 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Marine Science Technician Chief (MSTC) Joshua

O'Rourke, Sector North Carolina, U.S. Coast Guard; telephone (910) 772-2227, email Joshua.P.Orourke@uscg.mil; or Mr. Jerry Barnes, Waterways Management Branch, Fifth Coast Guard District, U.S. Coast Guard; telephone (757) 398-6230, email Jerry.R.Barnes@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

BOEM	Bureau of Ocean Energy Management
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i><b>Federal Register</b></i>
NM	Nautical Miles
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

On May 8, 2020, the Coast Guard published a notice of inquiry in the ***Federal Register*** (85 FR 27343) to solicit public comments on whether we should initiate a rulemaking to establish an anchorage ground offshore in the approaches to the Cape Fear River, NC, and to increase the size and relocate the existing Lockwoods Folly Inlet explosives anchorage. We received two comment letters in response, both endorsing a rulemaking to amend the anchorage regulations as described. The Coast Guard is now moving forward with this proposed rulemaking.

The Cape Fear River supports a diverse marine transportation system which includes Military Ocean Terminal Sunny Point, North Carolina State Port of Wilmington, and several oil terminals and bulk-handling facilities for cement, asphalt products, molasses, liquid chemicals, sulfur, fertilizers and liquid sugar. Military Ocean Terminal Sunny Point is a Department of Defense facility that stores and ships ammunition, dangerous cargo and explosives for United States forces worldwide. A federal navigation project provides for a channel 44 feet deep from the ocean to a point just south of Southport, NC, and 42 feet to the Lower Anchorage Basin and Turning Basin at Wilmington, NC. In support of continued port growth and growth in both size and

volume of vessel traffic, the U.S. Army Corps of Engineers is considering the need for major channel depth, width, and alignment changes. These include deepening the existing federal navigation channel to the Port of Wilmington, extending the ocean entrance channel farther offshore, and widening channels in the Cape Fear River where needed.

At the same time, the demand for offshore wind energy is increasing. Plummeting costs, technological advancements, increasing demand and great economic potential have combined to make offshore wind a promising avenue for adding to a diversified national energy portfolio. In 2018, the Bureau of Ocean Energy Management (BOEM) developed and sought feedback on a Proposed Path Forward for Future Offshore Renewable Energy Leasing on the Atlantic OCS (83 FR 14881, April 6, 2018). Offshore the Carolinas, BOEM has identified several wind energy lease and call areas and intends to work with the states of North Carolina and South Carolina using a regional model to plan and analyze these areas for potential future offshore wind leases.

Traditionally, vessels awaiting entrance and pilotage to the Cape Fear River anchor outside the traffic separation scheme west of the sea buoy (Cape Fear River Entrance Lighted Whistle Buoy CF). The Coast Guard has concerns that as wind energy areas are developed and electrical export cables installed, vessel traffic may be displaced or funneled into smaller areas, and areas traditionally used for anchoring may be impacted or lost. Establishing an adequate and dedicated offshore anchorage will preserve areas traditionally used for anchoring and alleviate potential hazardous conditions of vessels anchoring in the common approaches to the Cape Fear River.

On January 18, 1969, regulations for the Lockwoods Folly Inlet (33 CFR 110.170) explosives anchorage were published (34 FR 839) outlining the area as an anchorage reserved for the exclusive use of vessels carrying explosives. The anchorage is located within 3 nautical miles (NM) from shore and in water with charted depths

between 32 and 37 feet. The Coast Guard is concerned that the anchorage does not meet the current needs of safe navigation due to the increased size and drafts of vessels that call on Military Ocean Terminal Sunny Point and the Port of Wilmington, and a better location is possible in the interest of navigation and public safety.

The purpose of this proposed rule is to accommodate recent and anticipated future growth in cargo vessel traffic and vessel size that call on Military Ocean Terminal Sunny Point and the Port of Wilmington, improve navigation and public safety, and to preserve areas traditionally used for anchoring.

The legal basis and authorities for this notice of proposed rulemaking are found in 46 U.S.C.70006, 33 CFR 1.05-1, DHS Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorage grounds.

### **III. Discussion of Proposed Rule**

This proposed rule would formally establish an anchorage ground, Anchorage A, approximately 8 NM southwest of the Oak Island Light, west of the pilot boarding area, in an area traditionally used by cargo ships for anchoring in the approaches to the Cape Fear River, NC. This location is near existing traffic lanes and in naturally deep water with charted depths between 40 and 52 feet. This proposed rule also includes regulations intended to govern anchoring practices and provide the Captain of the Port additional controls over vessel choosing to anchor offshore. This proposed rule would also increase the size and relocate Lockwoods Folly Inlet explosives anchorage to adjacent Anchorage A on its western boundary; and rename it Anchorage B. Anchorage B would be approximately 5 NM further offshore than the existing anchorage and increase separation distances between vessels laden with explosives and the public. The use of Anchorage B would be expanded to include vessels carrying or handling dangerous cargo or cargoes of a particular hazard in addition to vessels carrying explosives; its use would be required

for vessels carrying such cargoes; and vessels anchored with such cargoes would be required to display a visible red flag or light. The specific coordinates for these proposed anchorage grounds are included in the proposed regulatory text at the end of this document.

You may find an illustration of the anchorages in the docket where indicated under **ADDRESSES**. Additionally, the anchorage ground is available for viewing on the Mid-Atlantic Ocean Data Portal at <http://portal.midatlanticocean.org/visualize/>. See “USCG Proposed Areas and Studies” under the “Maritime” portion of the Data Layers section.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and historical vessel traffic data pertaining to the anchorage locations. The regulation would designate and preserve an approximately 22 square mile deep water area traditionally used by cargo ships for anchoring near existing traffic lanes. It would also relocate the existing explosives anchorage approximately 5 NM further offshore increasing separation

distances between vessels laden with explosives and the public, and expand its size from approximately 5 to 7 square miles. This regulatory action provides commercial vessel anchorage needs while enhancing the navigation safety, environmental stewardship and public safety.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to use the anchorages may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. The towns and communities along the Cape Fear River approaches have an economy based on tourism and numerous small entities and businesses. The establishment of Anchorage A and Anchorage B will increase controls over vessels that currently anchor in the general vicinity and increase the distance between anchored vessels and the shore and beaches, lessening impacts these small entities may currently experience.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed

rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing an anchorage ground, Anchorage A, in an area traditionally used by cargo ships for anchoring in the approaches to the Cape Fear River, NC; and increasing the size of and relocating the Lockwoods Folly Inlet explosives anchorage to an area adjacent to Anchorage A (on its western boundary), expanding its use, and renaming it Anchorage B. Normally such actions are categorically excluded from further review under paragraph L59 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.



## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 110**

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 110 as follows:

## PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

**Authority:** 46 U.S.C. 70006, 2071; 46 U.S.C. 70034; 33 CFR 1.05–1;

Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.170 to read as follows:

### § 110.170 Cape Fear, NC.

(a) *The anchorage grounds.* All coordinates in this section are based on the World Geodetic System (WGS 84).

- (1) *Anchorage A.* The waters bound by a line connecting the following points:

Table 1 to paragraph (a)(1)

Latitude	Longitude
33° 47' 59.09" N	78° 14' 58.67" W
33° 47' 59.09" N	78° 06' 24.74" W
33° 46' 01.22" N	78° 06' 24.74" W
33° 46' 01.22" N	78° 14' 58.67" W

(2) *Anchorage B.* Explosives Anchorage: The waters bound by a line connecting the following points:

Table 1 to paragraph (a)(2)

Latitude	Longitude
33° 47' 59.09" N	78° 17' 49.00" W
33° 47' 59.09" N	78° 14' 58.67" W
33° 46' 01.22" N	78° 14' 58.67" W
33° 46' 01.22" N	78° 17' 49.00" W

(b) *Definitions.* As used in this section-

*Cargoes of particular hazard* means “cargo of particular hazard” as defined in §126.3 of this chapter.

*Class 1 (explosive) materials* means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

*Dangerous cargo* means “certain dangerous cargo” as defined in §160.204 of this chapter.

*U.S. naval vessel* means any vessel owner, operated, chartered, or leased by the U.S. Navy; and any vessel under the operational control of the U.S. Navy or Combatant Command.

(c) *General regulations.* (1) Vessels in the Atlantic Ocean near Cape Fear River Inlet awaiting berthing space within the Port of Wilmington shall only anchor within the anchorage grounds hereby defined and established, except in cases of emergency.

(2) Vessels anchoring under circumstances of emergency outside the anchorage areas shall be shifted to new positions within the anchorage grounds immediately after the emergency ceases.

(3) Vessels may anchor anywhere within the anchorage grounds provided such anchoring does not interfere with the operations of any other vessel at anchorage; except a vessel may not anchor within 1,500 yards of a vessel carrying or handling dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials. Vessels shall lie at anchor with as short of a chain or cable as conditions permit.

(4) Prior to entering the anchorage grounds, all vessels must notify the Coast Guard Captain of the Port Sector North Carolina (COTP) via VHF-FM channel 16.

(5) No vessel may anchor within the anchorage grounds for more than 72 hours without the prior approval of the COTP. To obtain this approval, contact the COTP via VHF-FM channel 16.

(6) The COTP may close the anchorage grounds and direct vessels to depart the anchorage during periods of severe weather or at other times as deemed necessary in the interest of port safety or security.

(7) The COTP may prescribe specific conditions for vessels anchoring within the anchorage grounds, including but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communications guards on selected radio frequencies.

(d) *Regulations for vessels handling or carrying dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials.* This paragraph applies to every vessel, except U.S. naval vessels, handling or carrying dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials.

(1) Unless otherwise directed by the Captain of the Port, each commercial vessel handling or carrying dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials must be anchored within Anchorage B.

(2) Vessels requiring the use of Anchorage B must display by day a red flag (Bravo flag) in a prominent location and by night a fixed red light. In lieu of a fixed red light, by night a red flag may be illuminated by spotlight.

Dated: August 2, 2021.

Laura M. Dickey,  
Rear Admiral, U.S. Coast Guard,  
Commander, Fifth Coast Guard District.

